IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 10TH OCTOBER 2007 / 18TH ASWINA 1929

Bail Appl..No. 6184 of 2007()

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CRIME NO. 169/2002 OF KASABA POLICE STATION

PETITIONER :

K.M.MOHAMMED HANEEFA,AGED 52,S/O.
K.A.MOIDEEN KUNNATH HOUSE,PARLI POST,PALAKKAD
TALUK,PALAKKAD DISTRICT.

BY ADV. SRI.K.ANAND

RESPONDENTS:

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1. STATE OF KERALA REP.BY THE PUBLIC
PROSECUTOR,HIGH COURT OF KERALA.

2. SUB INSPECTOR OF POLICE,KASABA POLICE
STATION.

BY PUBLIC PROSECUTOR ADV.SRI.S.U.NAZER

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 10/10/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

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B.A.No. 6184 of 2007

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Dated this the 10th day of October, 2007

ORDER

Application for anticipatory bail. The petitioner is the 3rd accused in a crime registered under the Kerala Abkari Act. Investigation is complete. Final report was filed. Altogether there were three accused persons. The petitioner was not available for arrest at any stage. The case against him was split up. The case against the co-accused proceeded. They were found not guilty and acquitted. Coercive processes have been issued by the learned Magistrate. The petitioner finds such processes chasing him.

2. The learned counsel for the petitioner submits that the petitioner is absolutely innocent. The learned counsel for the petitioner submits that the judgment of acquittal of the co-accused will expose the hollowness of the allegations raised against the petitioner. The petitioner does not deserve to suffer the trauma of arrest and incarceration. Appropriate directions under Section 438 Cr.P.C may in these circumstances be issued, submits the learned counsel for the petitioner.

3. The learned Public Prosecutor opposes the application. The learned Public Prosecutor submits that there are no circumstances in

this case justifying the invocation of extraordinary equitable discretion under Section 438. I find merit in the opposition by the learned Public Prosecutor.

4. After the decision in **Bharat Chaudhary v. State of Bihar** [A.I.R 2003 S.C 4662], it is trite that powers under Section 438 Cr.P.C can be invoked in favour of a person who apprehends arrest in execution of a non bailable warrant issued by a court in a pending proceedings. But even for that, sufficient and satisfactory reasons must be shown to exist. I am not persuaded in the facts and circumstances of this case to conclude that any such reasons exist.

5. This is a fit case where the petitioner must resort to the ordinary and normal course of appearing before the learned Magistrate having jurisdiction. He must then seek regular bail in the normal and ordinary course. I have no reason to assume that the learned Magistrate would not consider the application for regular bail on merits, in accordance with law and expeditiously. Every court must do the same.

6. In the result, this petition is dismissed. I may however, hasten to observe that if the petitioner appears before the learned Magistrate and applies for bail, after giving sufficient prior notice to the Prosecutor, the learned Magistrate must proceed to pass appropriate

orders on merits, in accordance with law and expeditiously.

7. Needless to say, the learned Magistrate must consider the contention of the petitioner that the reasons in the judgment of acquittal of the co-accused entitles him for the grant of regular bail.

(R.BASANT, JUDGE)

sj

/TRUE COPY/

P.A.TO JUDGE